

Police Civilian Review Panel

March 9, 2020

Fairfax County Government Center, Conference Room 8

Meeting Summary

Panel Members Present:

Hansel Aguilar
Jimmy Bierman
Bob Cluck
Hollye Doane, Panel Chair
Doug Kay
Frank Gallagher
Shirley Norman-Taylor
Sris Sriskandarajah, Panel Vice-Chair
Rhonda VanLowe

Others Present:

Gentry Anderson, OIPA
Julia Judkins, Counsel
Major Owens, FCPD
Chief Roessler, FCPD
Richard Schott, Independent Police Auditor
Complainant

The Panel's business meeting was called to order at 7:30 p.m.

Meeting Summary Approval: Ms. VanLowe moved approval of the summary from the Panel's February 10th meeting. Mr. Kay seconded the motion and it carried by unanimous vote.

Review Meeting for CRP-19-29: Ms. Doane asked if the complainant was present. The complainant was present, invited to the table to participate in the Review Meeting, and thanked for his attendance. Ms. Doane provided a summary of the incident and described the allegations and timeline subject of the Review Request. She then invited the complainant to address the Panel.

Complainant Statement:

The complainant thanked the Panel for the opportunity to be heard. He noted his dissatisfaction with the Fairfax County Police Department's (FCPD) disposition letter, as it did not state why he was followed by the officer and does not come to a conclusion regarding the allegation of racial profiling. Additionally, the complainant was concerned with the accuracy of the investigation as his allegation was that he was racially profiled, not the target of bias based policing. The complainant distinguished the term bias-based policing from racial profiling as bias based policing involves a detention. He added that the investigation was not impartial or objective because the investigator is an FCPD officer.

Complainant Questioning:

Mr. Aguilar: What is your understanding of what the Panel is and what it is structured to do? How did you find out about the Panel? The complainant replied that someone recommended that he submit his complaint to the Panel. His understanding of the Panel is to ensure investigations are complete and conducted properly.

Mr. Aguilar: Do you understand what the Panel is authorized to do as a body? The complainant replied affirmatively and that he knows the Panel is able to offer recommendations to the FCPD.

Mr. Aguilar: Prior to this interaction, did you have positive interactions with law enforcement? The complainant replied that he previously had very good interactions with law enforcement officers.

Mr. Aguilar: Did you have positive interactions specific to the FCPD? The complainant replied that he did not have positive interactions with FCPD officers but did have positive interactions with officers in the Virginia Beach area. He mentioned that he has had two negative encounters with FCPD officers, and his friends have also had negative encounters with FCPD officers.

Mr. Aguilar: In your Review Request, you outlined concerns with the investigator. Is your concern that the investigator is a FCPD officer? The complainant replied affirmatively.

Ms. VanLowe: Can you expand more on the encounters you have had with law enforcement officers that were positive and the encounters you have had with law enforcement officers that were negative? What about this situation made you feel uncomfortable or that racial bias was involved? The complainant replied that in the subject incident, he was minding his own business and he made eye contact with an officer in a police cruiser across the street. The officer made a U-turn and followed him into the apartment complex. When the officer approached, he did not introduce himself and began questioning the complainant. The complainant recalled a previous time when he had a broken taillight and an officer stopped him, introduced himself, told him why he was being stopped. The officer had asked the complainant to fix the taillight and gave him a warning instead of a ticket.

Ms. Norman-Taylor: You indicated you have had two encounters with FCPD officers, and both were not positive. Can you elaborate on the other encounter? The complainant replied that he was at a bar in Reston and was approached by an FCPD officer because the officer smelled marijuana in the area and asked for the complainant's identification. The complainant said he felt harassed.

Mr. Kay: Did the investigator offer any explanation about the disposition letter? The complainant replied in the negative.

Mr. Kay: How did you receive the disposition letter? Did you get a phone call? The complainant replied that he received the disposition letter via email and that he did not receive a phone call explaining the letter. The complainant said he followed up with the investigator via email to ask questions; however, the investigator said he could not answer them. The complainant also explained that he submitted a Virginia Freedom of Information Act (VFOIA) request for the in-car video footage, but the FCPD did not release it.

Mr. Kay: Were you offered to review any video footage related to this incident? The complainant replied that the FCPD did offer to let him review the video footage, but he declined because he would have preferred to receive the footage via his VFOIA request so that he could show others as well.

Mr. Kay: About how much time passed from the time you made eye contact with the officer to when you parked your car? The complainant replied it was about two to three minutes.

Mr. Bierman: At one point during the interaction, did you ask the officer if you were free to go? The complainant replied that he did ask the officer this question but did not feel free to go because the officer was standing at the car door blocking him from exiting the vehicle and the officer told him to answer his questions.

Mr. Bierman: What remedy are you seeking from the Panel? The complainant replied he would like for the Panel to recommend that the officer receive additional education on implicit bias and further training.

Mr. Sriskandarajah: During the encounter, the officer asked if you lived at the apartment complex and you say you have a parking sticker for the complex on your vehicle. Did you think to ask the officer to look at the parking sticker? The complainant replied he did not think of that at the time. He added that as a detective with the FCPD, the officer should have known to check for it.

Mr. Sriskandarajah: Did you ask the officer why he was bothering you? The complainant replied that he asked the officer why he was harassing him, and the officer replied that he was not harassing him. The complainant said this made him feel afraid and unsure of what the officer was going to do next.

Mr. Sriskandarajah: You had a backpack in the vehicle. Where was the backpack during the encounter? The complainant replied that he believed it was on the passenger seat.

Mr. Sriskandarajah: Did the officer have his lights activated when he stopped you? The complainant replied that the lights on the vehicle were not activated when he was stopped.

Mr. Sriskandarajah: Did you think the interaction was consensual? The complainant replied that he did not feel that the interaction was consensual as the officer said that he had to answer the questions.

Mr. Sriskandarajah: You handled yourself very well in this situation. Do you have previous training on your rights? The complainant replied that during his first encounter with the FCPD, he did not know his rights, so he educated himself. He added that if he had not known his rights, the situation could have ended badly.

Mr. Gallagher: Were any of the questions the officer asked inappropriate, and if so, in what way? The complainant replied that the questions were not inappropriate, but he was within his rights to not provide answers.

Mr. Gallagher: If the officer was in uniform asking simple questions, why did you refuse to answer them? The complainant replied that he did answer the officer when the officer asked whether or not he lived in the apartment complex. The complainant did not want to tell the officer exactly which unit he lived in because he was afraid. He referenced an incident in Dallas, Texas, where an officer went into a wrong apartment and shot an individual who later succumbed to the injuries.

Ms. Norman-Taylor: Was the officer in uniform? The complainant replied that the officer was in uniform. The complainant asked the officer why he was being stopped and the officer did not provide an answer.

Ms. Doane: In your Review Request, you stated there was a difference between racial bias and racial profiling. Can you please elaborate on the distinction? The complainant replied that the FCPD makes

the distinction within its general orders. He added that for bias based policing to occur, he would have had to be detained or engaged in an investigative detention. The complainant added that the FCPD concluded that he was not subject to bias based policing because the complainant was not detained or engaged in an investigative detention during the incident.

Ms. Doane: Why do you believe the officer stayed on the scene after the incident? The complainant replied that he was unsure. He figured the officer remained on scene to make sure the complainant actually lived in the apartment complex.

Ms. Doane: How did it make you feel that the officer remained at the scene? The complainant replied he was nervous. He did not want to go into his apartment because he did not want the officer to know exactly which apartment he lived in and again mentioned the incident that occurred in Dallas, Texas.

Ms. Doane: You were allegedly shaking and nervous during the incident. Why did you feel that way in that moment? The complainant replied that he was nervous because he was followed by the officer into his apartment complex. He also referenced incidents and the poor relationship between African Americans and law enforcement officers.

Mr. Sriskandarajah: Did you have any doubts that he was a police officer? The complainant replied that he knew he was a police officer.

Mr. Sriskandarajah: Were there any witnesses to the incident? The complainant replied that there were people outside when the incident occurred.

Mr. Sriskandarajah: Did you ever tell the officer to leave you alone? The complainant replied that he did not but tried to give the perception that he did not want to speak with the officer.

Ms. Doane: Would this incident turn out differently if the officer explained why he stopped you? The complainant replied it would have been different because he would have understood why the officer was asking questions and would not think that he was racially profiled.

Ms. Doane: Would you have answered the officer's questions if you knew why you were being stopped? The complainant replied that he would not have answered the questions if he knew why he was being stopped because he did not commit a crime.

Mr. Cluck: If you were a white individual, do you think the incident would have not occurred? The complainant replied affirmatively and noted that he has friends who are minorities who have had similar issues with the FCPD.

Mr. Aguilar: If the officer who approached you was black, would you have responded with the same hesitancy? The complainant replied affirmatively.

Ms. Doane: In the FCPD disposition letter you received, it stated that the investigation found that some of the officer's actions were not professional and did not meet the expectation of how FCPD officers should engage with community members. Appropriate measures were imposed to prevent it from occurring again. Is this determination enough for you? The complainant replied that it was not because the letter did not explain what happened, why he was followed, or what policies were violated. He noted he knew that officer discipline could not be disclosed but he would like to know which policies were violated.

Ms. Doane: Do you feel that the investigation failed to properly address the issue of racial profiling? The complainant replied affirmatively.

Mr. Bierman: If the FCPD disposition letter included a statement that the officer articulated race neutral reasons for his actions but was found to be unprofessional, would you still have requested a review? The complainant replied affirmatively because he did not agree with the outcome of the investigation.

Mr. Sriskandarajah: What could have the officer said that would have made you not request a review? The complainant replied the officer could have introduced himself and explained why he was conducting the stop and answered his basic questions.

Mr. Aguilar: Is it your understanding that the police have to tell you why they are taking a certain action? The complainant replied that if he was being detained, the officer would have had to tell him why but if it was a consensual encounter, the officer would not have to tell him why.

Ms. Doane: Did you think this encounter was consensual or a detention? The complainant replied that at the time, he thought he was being detained but looking back, it was consensual because the officer did not say that he had to stay until later in the encounter.

Mr. Bierman: Did you feel like you were free to leave during the encounter? The complainant replied he did not feel that he was free to leave because the officer was standing at his car door blocking him from exiting the vehicle.

Mr. Cluck: Is the crux of the issue that the officer followed you after you made eye contact with the officer? The complainant replied affirmatively and said he wants to know why he was followed.

Mr. Bierman: If the officer introduced himself at the start of the encounter and explained his actions, would you have thought the encounter was biased? The complainant replied affirmatively because he and the officer only made eye contact. He said he was not acting suspicious and did nothing wrong.

Ms. Doane: Did you make eye contact with the officer or did you lean your body out of the car to look around? The complainant replied he was looking out the window of his vehicle when he locked eyes with the officer.

Ms. Doane: Did you do anything unusual to spark the officer's suspicion? The complainant replied that he did not.

Mr. Sriskandarajah: If the officer approached you when you were outside of your vehicle, would you have felt that would be biased? The complainant replied that he was unsure.

Ms. Doane thanked the complainant for attending and participating.

FCPD Statement:

The Chief addressed the complainant and acknowledged that the complainant has every right to be afraid of the police. The Chief summarized the investigation related to the complaint. He explained the steps that he as Chief took when reviewing process of the internal investigation and that he requested additional investigation multiple times because he disagreed with the analysis of his commanders. He explained how policing issues that occur across the country can impact policing in Fairfax County. He is mandating the formation of a human relations committee to help address and train away racial-bias

issues. The Chief added that the officer subject of the complaint made a series of poor cascading judgements and was unable to disengage.

FCPD Questioning:

Ms. VanLowe: The officer was found to be in violation of FCPD General Order 201, Human Relations. Can you explain why he was not found to be in violation of the FCPD's bias based policing policy? The Chief replied that the questions asked during the investigation were to dig deeper into the issue of bias based policing. The officer articulated a series of cascading events that were factual. Based on the investigation, there is no preponderance of the evidence that race was a factor in this incident. Based on this, the Chief said he did not have evidence to reach that threshold.

Ms. VanLowe: From my perspective, there was scant attention to the allegation of bias based policing within the investigation file. She explained that she did not get a sense the issue was analyzed thoroughly. The Chief replied that when he prepared to interview the officer, he reviewed the officer's training history. During the interview, the officer did not indicate that any actions were based on race. The officer articulated a series of poor cascading steps and there was no reason to believe he was not telling the truth.

Mr. Sriskandarajah: Based on this encounter, what would have made you think it was biased? The Chief replied that he would not use hindsight and would answer questions based on factual evidence. He added that he ordered Major Owens to establish a human relations committee. The Chief expects officers to know their patrol areas better.

Mr. Kay: During the investigation, was there an effort made to review the officer's social media accounts to see if he had anything questionable in his profiles? The Chief replied that this was not done during the investigation, but he is aware it is being discussed by the Panel. Upon order by the Chief, Major Owens developed a policy on this issue, and it was recently implemented.

Mr. Kay: During the investigation, was there an effort made to question the officer's peers in the detective unit? The Chief replied that this was not done during the investigation and that the investigation focused on the encounter itself and other traffic stops the officer has conducted. If an officer's peers are questioned during every investigation, it would stall officers from being on the streets serving the community.

Mr. Kay: Were the officer's stop statistics reviewed? The Chief replied that the investigation reviewed the officer's arrest statistics.

Mr. Aguilar: Was there anything within the officer's training record that the officer could have improved upon? The Chief replied that he ordered Major Owens to implement a menu of training classes that first line supervisors will send their officers to and will mandate additional human relations training. He referenced the study the Independent Police Auditor commissioned to review the racial disparity in use of force data.

Mr. Aguilar pointed out that the subject officer had a total of six training hours related to culture and diversity. He suggested the human relations committee instill a racial lens so that all proactive policing is conducted with a component of community diversity and culture. The Chief replied that he is being more transparent with the department and that the officer has received great training but could not use

that as a crutch. He added that Major Owens is looking into best practices related to cultural awareness training to train away the issue. The Chief said he is holding the officer accountable, working with advocates to put new policies in place, and is mandating additional human relations training.

Mr. Bierman thanked the Chief for acknowledging that there is an issue with simple “glances” across the country and appreciated all the work the Chief did throughout the course of the investigation. Mr. Bierman asked if implicit bias was explored during the investigation. The Chief replied that everyone has implicit biases and that based on the facts of this case, there is no reason to believe the officer acted based on race. In this specific case, the officer did not know the area and did not complete thorough police work.

Mr. Bierman: Do you believe this cascade of events would have occurred if the individual was a 55 year-old white male? The Chief replied this incident would still be a problem regardless of the person’s race, age, or gender and it is the reason he implemented the human relations committee. He added that this incident shows unacceptable and incomplete police work, and that the complainant was treated wrongly.

Ms. VanLowe explained that she wanted to see a robust analysis related to bias based policing in the investigation file and saw two problems. First, she did not see where a standard was set on whether bias is present. She expressed her understanding that bias is difficult to uncover but when making a decision on whether bias is present, there needs to be standard. Second, she felt that additional investigation into social media, statistical analysis, and interviewing coworkers would be helpful. She appreciated the work that the Chief put into the investigation. The Chief replied that he spent a tremendous amount of time on this case on top of running a police department. He added that the FCPD is undergoing a change in culture and that the department’s reliance on best practices is not good enough for the community. Therefore, he is looking into ways to better define the issue and set the bar for investigating racial profiling and bias incidents. He added that this is an issue that all in the profession are working on and that this specific case will instill a lot of change within the department.

Mr. Kay: Does the FCPD compare prior complaints against an officer to current complaints? Major Owens replied that the FCPD has an early warning system in place that factors in all complaints against an officer and generates an indicator to supervisors if an issue arises. An investigation commences and all complaints are considered.

Mr. Kay: Was the early warning system a factor in this investigation? Major Owens replied that the officer’s disciplinary history was reviewed by command staff as a part of the investigation review process.

Ms. Norman-Taylor thanked the Chief for his work on the investigation. She provided a personal story of when her son was pulled over. She noted that in this case, the investigator did a great job, but she felt that the issue of bias was not addressed thoroughly. The Chief replied that the investigation found that the officer relied on training and made a mistake. He added that the department has work to do in changing its overall culture. Major Owens added that the human relations committee will discuss the importance of procedural justice regardless of an individual’s race or ethnicity.

Mr. Aguilar noted how body worn camera footage can be used to compare how officers interact with individuals based on their race and ethnicity. He suggested the FCPD look into auditing body worn

camera footage once they are implemented in May. The Chief replied that the FCPD currently audits in-car video footage and should implement an audit of body worn camera footage.

Mr. Gallagher noted that what the FCPD did in this instance is only one half of the encounter. The other half is the person who is involved in the incident. He reminded the Panel that they only have the authority to hold the FCPD accountable and the Panel or FCPD cannot control the actions of those who are stopped. Ms. Norman-Taylor replied that there are situations when people can exercise their rights when interacting with the police. The Chief replied that he wants his officers to understand the importance of de-escalation and emphasized that the complainant should know that he did nothing wrong.

Ms. Doane thanked the Chief and Major Owens for attending and participating.

Panel Deliberations:

Ms. Doane directed Panel Members to the three findings outlined in the Panel's Bylaws from which Panel Members can vote on after reviewing an FCPD Investigation. She invited the Panel to discuss whether the FCPD investigation was accurate, complete, thorough, objective, and impartial. Mr. Kay reminded the Panel that Article VI.E.1.h of the Bylaws is another option the Panel has to request that the FCPD conduct further investigation and referenced that the Panel used this mechanism to request further investigation for CRP-18-26. The Panel openly deliberated.

Panel Findings:

Mr. Kay moved that the Panel request further investigation by the FCPD and recommend that the issue of bias be more completely addressed by: 1) running a google search of the officer to review social media accounts to ensure there is no evidence of bias; 2) interviewing the officer's coworkers or subset of witnesses to be sure there is no evidence that the officer is biased; 3) analyzing the officer's statistics related to stops to ensure there is no evidence of bias. The motion was seconded by Mr. Bierman.

Ms. VanLowe asked that the motion be amended to address whether other complaints were filed against the officer. Mr. Kay accepted the friendly amendment.

Mr. Sriskandarajah asked whether interviewing the officer's coworkers would be appropriate. He provided a hypothetical example of a coworker who may have an axe to grind with the subject officer and provides false information during the investigation. Mr. Kay replied that if an officer falsifies statements during a witness interview, they would be subject to punishment.

Mr. Cluck reminded the Panel that the complainant suggested remedying the incident with further training and that further investigation would be unnecessary.

Ms. VanLowe asked that it be clear that the Panel's recommended steps for further investigation should not be prescriptive or limiting and allow flexibility for the FCPD to conduct additional investigation into bias as they see fit.

The question was called on the amended motion and it carried by a vote of six, with Mr. Cluck, Mr. Gallagher, and Mr. Sriskandarajah voting "Nay." *Ms. Doane asked Ms. Anderson to draft a letter to the Chief requesting further Investigation into CRP-19-29.*

Initial Review Report for CRP-20-03: Mr. Bierman presented the Initial Review Report for CRP-20-03 to the Panel and announced the review request was submitted by another individual involved in the incident subject of CRP-19-11. The review request was untimely filed, as the complainant had 60-days from May 13, 2019, to request a review and the Review Request was not submitted to the Panel until January 25, 2020.

Therefore, Mr. Bierman moved that the Panel approve the subcommittee's recommendation to not undertake a review of CRP-20-03. Mr. Kay seconded the motion and it carried by unanimous vote.

2019 Annual Report: Ms. Doane announced that the Panel's 2019 Annual Report was published on February 28th and provided to the Board of Supervisors. Mr. Kay informed the Panel that he and Ms. Doane will present the report to the Board of Supervisors Public Safety Committee on Tuesday, March 17th. *Mr. Kay will send the draft PowerPoint presentation to be used at the meeting to Panel Members for their review.*

New Business: Ms. Doane announced the next quarterly meeting is scheduled for Friday, March 20th. The group will discuss the four new Panel recommendations made in the Review Report for CRP-19-11 and the 2019 Annual Report. She asked if Panel Members had items they would like to submit for discussion. Mr. Kay asked that Panel representatives ask for further information on FCPD racial bias training and the FCPD human relations council.

Mr. Aguilar announced the importance of participating in the 2020 census and indicated that data collection begins on March 12th.

Next Meeting: The Panel's next business meeting is Monday, April 6th, 2020, at 7:30 p.m. in the Government Center, Conference Room 8.

The meeting adjourned at 9:44 p.m.